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Arlington, VA 22202

In re Application of	:	
DUWAT, Patrick, et al.	:	
U.S. Application No.: 09/508,514	:	
PCT No.: PCT/IB99/01430	:	COMMUNICATION IN
International Filing Date: 26 July 1999	:	RESPONSE TO SUBMISSION
Priority Date: 24 July 1998	:	UNDER 37 CFR 1.42
Attorney's Docket No.: 0384-0049-0 PCT	:	
For: PROCESS FOR PREPARING STARTER	:	
CULTURES OF LACTIC ACID BACTERIA	:	

This Communication is issued in response to applicants' submission of a declaration executed by Anne BRAVARD as "heiress" of inventor Patrick DUWAT, which is being treated as a submission under 37 CFR 1.42.

BACKGROUND

On 26 July 1999, applicants filed international application PCT/IB99/01430 which claimed a priority date of 24 July 1998 and which designated the United States. On 03 February 2000, a copy of the international application was communicated to the United States Patent And Trademark Office ("USPTO") by the International Bureau ("IB").

On 24 March 2000, exactly twenty months from the priority date, applicants filed a transmittal letter for entry into the national stage in the United States which noted that the international application had already been transmitted by the IB and was accompanied by a check in the amount of \$1,428 (including \$840 for the basic national fee and \$130 as the surcharge for filing the declaration after the twenty month deadline).

On 09 May 2000, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 was required. The Notification also informed applicants that the failure to submit this declaration within one month of the date of the Notification would result in abandonment of the application.

On 09 November 2000, applicants filed a response accompanied by the following materials: (1) a request for a five month extension of time to respond to the Notification Of Missing Requirements, including a check for the required \$1,890 extension fee; (2) a declaration executed by two of the named inventors and by Anne BRAVARD as "heiress" of the third

inventor, Patrick DUWAT; and (3) a document in French which is identified by applicants as a "Certificate Of Heredity." Based on the request for an extension of time and the payment therefor, the response filed on 09 November 2000 is considered a timely response to the Notification Of Missing Requirements mailed on 09 May 2000.

DISCUSSION

37 CFR 1.42 *When the Inventor is Dead*, states, in part:

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

Discussing this provision, section 409.01(a), *Prosecution by Administrator or Executor*, of the Manual of Patent Examining Procedure (MPEP) states, in part (emphasis added):

Application may be made by the heirs of the inventor, as such, if their is no will or the will did not appoint an executor and if accompanied by a certificate from the court that they are **all** of the heirs and that the estate was under the sum required by state law for the appointment of an administrator.

In the declaration submitted here, Anne BRAVARD is identified as "heiress of Patrick DUWAT." No papers in English have been filed establishing or claiming that Anne BRAVARD is the legal representative of the deceased, and nowhere in the declaration is it stated that Anne BRAVARD is the **only** heir to Patrick DUWAT. In fact, nothing has been submitted which indicates that Patrick DUWAT is deceased. The French document referred to as a "Certificate Of Heredity" can not be used as evidence of such facts because applicants have not submitted a translation of this document into English.

The declaration filed on 09 November 2000 cannot be accepted under 37 CFR 1.42 absent a statement in the declaration (or other evidence, in English) which demonstrates that inventor Patrick DUWAT is deceased and that Anne BRAVARD is either the legal representative of his estate, or, if no such representative exists, that she is the sole heir of the deceased inventor and that no legal representative is required to be appointed by the applicable law.

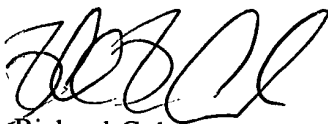
CONCLUSION

The submission under 37 CFR 1.42 is **DISMISSED** without prejudice.

Applicants have **two (2) months** from the mailing date of this Communication to submit a proper response under 37 CFR 1.42. Failure to provide a proper and timely response will result in abandonment.

Extensions of time may be obtained under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the International Division, Legal Staff.



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